

OS REGISTRY
FILE SAC-2
Legal
S. 1815

*OLL 85-3449
15 November 1985

MEMORANDUM FOR: DC/ALD/OGC
C/PPG/OS
C/SECOM
C/LIA/IC Staff

FROM:

Legislative Liaison
Office of Legislative Liaison

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SUBJECT: Revised Views Letter on S. 1815

1. Attached please find a copy of a letter from the Director of Central Intelligence (DCI) to Senator Hatch stating the DCI's views on S. 1815. The changes in it reflect our meeting of 12 November 1985.

2. On 13 November 1985, and I met with Larry Kettlewell, Senator Hatch's staff designee on the Senate Select Committee on Intelligence (SSCI) and Kevin McGuinness, Counsel, Majority Staff, Senate Labor and Human Resources Committee. Mr. McGuinness also works for Senator Hatch and has responsibility within Labor and Human Resources for S. 1815. Mr. Kettlewell indicated very briefly to Mr. McGuinness that we were concerned about S. 1815. Mr. McGuinness responded that he thought the Senator would be favorably disposed to our concerns. He stated further that S. 1815 had not been introduced so much with the expectation of immediate Senate action but rather with the hope of spurring things along on the House side with regard to H.R. 1524, the House "companion" to S. 1815. Thus, he did not expect action on S. 1815 until December 1985 or January 1986. He suggested that we contact him again in a few weeks to explain our concerns in detail. We indicated that we would do so.

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3. The issue of having the agencies within the Intelligence Community proceed as a group vis a vis S. 1815 was also raised at the 13 November 1985 meeting of those individuals within the Intelligence Community who follow legislation. Following a discussion of the idea, they seemed receptive to it.

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4. We plan to forward the views letter to the Office of Management and Budget (OMB) for clearance in the very near future. We will keep you advised ~~as to developments on the~~ issue.



Attachment:
as stated

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Central Intelligence Agency



Washington, D.C. 20505

The Honorable Orrin G. Hatch
Chairman
Committee on Labor & Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I write in regard to S. 1815, the "Polygraph Protection Act of 1985" introduced by Senator Kennedy and you and referred to the Committee on Labor and Human Resources. I would like to bring to your attention one issue raised by the Bill which is of concern to me in my capacity as head of the Intelligence Community.

S. 1815, by its terms, applies to "entities engaged in interstate commerce". Of course, by definition, neither the federal government nor any of its organizations in the Intelligence Community "engage in interstate commerce". Further, Section 8 of the Bill explicitly exempts "employees of the United States" from the Bill's provisions. Thus, S. 1815 would exclude the Agency and all other agencies or organizations within the Intelligence Community from its scope. I believe, as I am sure you do, that such an exclusion is both necessary and proper.

Though S. 1815 excludes the Agency and the Community, I am, nevertheless, concerned about its potentially adverse impact upon Agency and Community contractors. As you may know from your membership on the Select Committee on Intelligence (SSCI), the Agency and the Community (including, most especially, the National Security Agency) are parties to contracts with various companies, individuals and other private concerns which routinely provide goods and services (often of a quite sensitive nature) essential to the intelligence, counterintelligence and security functions of the contracting agencies. In order to insure the security of such arrangements, the Agency, as part of its industrial security program, administers polygraph examinations to certain of the contractor's employees. Other agencies within the Intelligence Community have similar arrangements. In these days of increasing concern over personnel security, the wisdom of such arrangements has become apparent.

I do not believe it was the intent of S. 1815 to include within its prohibitory scope these programs which are so clearly related to maintaining the security of the national intelligence mission. In fact, I note that Subsection (2) of Section 8 of the Bill excludes "personnel of contractors of the Department of Defense with access to classified information." Nevertheless, I am concerned that the wording of S. 1815, as it stands now, could be interpreted to cover examinations administered to employees of Agency and Community contractors. Such an interpretation would obviously have an adverse effect upon the Agency's industrial security program as well as on similar programs of other organizations within the Intelligence Community.

In order to remedy this problem, the Agency and the Community believe that Section 8 of S. 1815 should be amended to make it clear that the Bill does not cover examinations administered to employees of Agency or Community contractors. This could be accomplished by amending Section 8 to add a new subsection thereof, Subsection 3, which would read as follows:

SEC. 8. The provisions of this Act shall not apply with respect to-

* * *

(3) contractors, or employees thereof, of agencies or organizations in the Intelligence Community (as defined in Section 3.4 of Executive Order 12333 or its successor Orders) in connection with such contracts.

In connection with this amendment, I have enclosed a listing of the agencies and organizations in the Community as defined in Executive Order 12333.

I believe that this amendment does not detract from the purpose of S. 1815 but insures that the Agency's industrial security program, and others like it within the Intelligence Community, will continue to function unimpeded.

I appreciate the opportunity to bring these important concerns to your attention. Any questions in this matter should be directed to [redacted] Chief, Legislation Division, Office of Legislative Liaison [redacted]

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Sincerely,

William J. Casey
Director of Central Intelligence

Enclosure

cc: The Honorable Edward M. Kennedy
Committee on Labor and Human Resources

The Honorable Dave Durenberger, Chairman
Senate Select Committee on Intelligence

The Honorable Patrick Leahy, Vice Chairman
Senate Select Committee on Intelligence

INTELLIGENCE COMMUNITY AGENCIES

Subsection (f) of Section 3.4 of Executive Order 12333 "United States Intelligence Activities" defines the Intelligence Community as the following agencies or organizations:

°the Central Intelligence Agency (CIA);

°the National Security Agency (NSA);

°the Defense Intelligence Agency (DIA);

°offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

°the Bureau of Intelligence and Research of the Department of State;

°the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of the Treasury and the Department of Energy; and,

°staff elements of the Director of Central Intelligence.